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2006

FILED
JANICE K. BREWER
SECRETARY OF STATE

CHAPTER 83

SENATE BILL 1165

AN ACT

AMENDING SECTIONS 38-1003 AND 38-1004, ARIZONA REVISED STATUTES; RELATING TO
THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1003, Arizona Revised Statutes, is amended to
3 read:

4 38-1003. Powers and duties of council

5 The council, pursuant to recognized merit system principles of public
6 employment, shall from time to time:

7 1. Classify or reclassify all positions occupied by law enforcement
8 officers within the branch of government employing the officer and recommend
9 schedules of salary and other compensation payable for the officer
10 classification.

11 2. Fix and refix standards and qualifications of all positions so
12 classified.

13 3. Provide a plan for fair and impartial selection, appointment,
14 retention and separation or removal from service by resignation or dismissal
15 of all classified law enforcement officers. The provisions of paragraph 4
16 shall apply to appointments.

17 4. Provide a plan for promotion of law enforcement officers which
18 shall give appropriate consideration to qualifications, record of
19 performance, seniority and conduct within the field of law enforcement.
20 Vacancies within a department shall be filled whenever possible by promotion
21 within a department and shall be on the basis of competitive examination. If
22 a vacancy occurs within a department the council, upon request, shall certify
23 to the head of the department the names of five officers in the order of
24 their relative excellence in the competitive examination from which certified
25 list the appointment or promotion may be made.

26 5. Adopt rules necessary for the orderly administration of the
27 provisions of this article.

28 6. Hear and review appeals from any order of the department head in
29 connection with suspension, demotion or dismissal of a classified law
30 enforcement officer. If the order of the department head was for a
31 suspension greater than sixteen hours, demotion or dismissal and the council
32 exonerates the officer, the council may award, in whole or in part, the
33 reasonable costs and attorney fees that the employee LAW ENFORCEMENT OFFICER
34 incurred OR WERE INCURRED ON BEHALF OF THE LAW ENFORCEMENT OFFICER in
35 connection with the appeal. The award of attorney fees by the council shall
36 not exceed ten thousand dollars. An award of attorney fees does not apply if
37 either of the following applies:

38 (a) The order of the department head was not for disciplinary purposes
39 but was for administrative purposes such as a reduction in force.

40 (b) The disciplinary action related to off-duty activities unrelated
41 to the required duties of the law enforcement officer. The council's
42 determination shall be final except on appeal as provided in section
43 38-1004. If the department head appeals the decision of the council, the
44 council's award of any costs or attorney fees to an officer shall be stayed
45 pending the conclusion of the appeal. If the department head's decision is

1 upheld on appeal, the award of costs or attorney fees in favor of the officer
2 shall be reversed.

3 Sec. 2. Section 38-1004, Arizona Revised Statutes, is amended to read:

4 38-1004. Appeals; hearings

5 A. A classified law enforcement officer who is suspended, demoted or
6 dismissed by the department head, after a hearing and review before the merit
7 system council, may have the determination of the council reviewed upon writ
8 of certiorari in the superior court of the county in which the law
9 enforcement officer resides. If the determination of the council is
10 overruled by the court, the law enforcement officer shall be reinstated in
11 the officer's position and the officer shall be reimbursed for any
12 compensation withheld pending determination by the council and court.

13 B. If the order of the department head was for a suspension greater
14 than sixteen hours, demotion or dismissal and the court exonerates the
15 officer, the court may award, in whole or in part, the reasonable costs and
16 attorney fees that the LAW ENFORCEMENT officer incurred OR WERE INCURRED ON
17 BEHALF OF THE LAW ENFORCEMENT OFFICER in the court proceedings. The award of
18 attorney fees by the court shall not exceed fifteen thousand dollars. An
19 award of attorney fees does not apply if either of the following applies:

20 1. The order of the department head was not for disciplinary purposes
21 but was for administrative purposes such as a reduction in force.

22 2. The disciplinary action related to off-duty activities unrelated to
23 the required duties of the law enforcement officer. If the department head
24 appeals the decision of the court, the court's award of any costs or attorney
25 fees to an officer shall be stayed pending the conclusion of the appeal. If
26 the department head's decision is upheld on appeal, the award of costs or
27 attorney fees in favor of the officer shall be reversed.

28 C. If a law enforcement officer of a county, city or town described in
29 section 38-1007 appeals from a decision of a department head in connection
30 with the law enforcement officer's suspension greater than sixteen hours,
31 demotion or dismissal and the county, city or town maintains a merit system
32 or civil service plan for its employees, and the merit system or civil
33 service plan appeals board exonerates the officer, the merit system or civil
34 service plan appeals board may award, in whole or in part, the reasonable
35 costs and attorney fees that the law enforcement officer incurred OR WERE
36 INCURRED ON BEHALF OF THE LAW ENFORCEMENT OFFICER in connection with the
37 appeal. The amount of the award by the merit system or civil service plan
38 appeals board shall not exceed ten thousand dollars. If the department head
39 appeals the decision of the merit system or civil service appeals board, the
40 award of attorney fees shall be stayed pending the conclusion of the
41 appeal. If the officer appeals to court the decision of the merit system or
42 civil service plan appeals board, or of the city or town council or board of
43 supervisors if the city, town or county has no such board, and the court
44 exonerates the officer, the court may award, in whole or in part, the
45 reasonable costs and attorney fees that the law enforcement officer incurred

1 OR WERE INCURRED ON BEHALF OF THE LAW ENFORCEMENT OFFICER in connection with
2 the appeal. The award of attorney fees by the governing body or court shall
3 not exceed fifteen thousand dollars. An award of attorney fees under this
4 subsection does not apply if either of the following applies:

5 1. The order of the department head was not for disciplinary purposes
6 but was for administrative purposes such as a reduction in force.

7 2. The disciplinary action related to off-duty activities unrelated to
8 the required duties of the law enforcement officer. If the department head
9 appeals the decision of the court, the court's award of any costs or attorney
10 fees to an officer shall be stayed pending the conclusion of the appeal. If
11 the department head's decision is upheld on appeal, the award of costs or
12 attorney fees in favor of the officer shall be reversed.

13 D. A department head shall have the right to have all council policies
14 and decisions reviewed upon writ of certiorari in the superior court of the
15 county in which the law enforcement officer resides and legal counsel for the
16 department head shall be provided by the county or city attorney in whose
17 jurisdiction the department lies.

APPROVED BY THE GOVERNOR APRIL 10, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2006.